

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

BOBBY COLBERT,

Petitioner,

v.

JASON BENNETT,

Respondent.

Case No. 2:24-cv-01002-DGE-TLF

ORDER DIRECTING
RESPONDENT TO SUPPLEMENT
ANSWER AND STATE COURT
RECORD; ORDER CONCERNING
MOTIONS

On July 29, 2024, Petitioner Bobby Darrell Colbert filed his federal habeas Petition, pursuant to 28 U.S.C. § 2254, challenging his 2005 Skagit County convictions for rape in the second and third degree. Dkt. 8. He is currently confined at the Stafford Creek Corrections Center in Aberdeen, Washington. *Id.* Respondent filed an answer on September 5, 2024. Dkt. 21. Respondent argues the federal habeas petition should be dismissed as successive. *Id.*

Petitioner has filed several other federal habeas petitions challenging his conviction, and the Court determined that Petitioner's habeas petitions were successive and either transferred them to the Ninth Circuit as second or successive petitions, or dismissed the case. *See Colbert v. McDonald*, C08- 0870-RSL; *Colbert v. Sinclair*, C11-0076-RSM; *Colbert v. Glebe*, C12-0563-RAJ; *Colbert v. Gilbert*, C16-1247-JLR; *Colbert v. Gilbert*, C16-1663-RSL; *Colbert v. Haynes*, C18-1350-RSM, *Colbert v. Haynes*, C19-0467-RAJ; *Colbert v. Bennett*, C23-1122-JNW; *Colbert v. Bennett*, C24- 0889-LK; and

ORDER DIRECTING RESPONDENT TO
SUPPLEMENT ANSWER AND STATE COURT
RECORD; ORDER CONCERNING MOTIONS - 1

1 *Colbert v. Bennett*, C24-1439-DGE-SKV. Here, Petitioner raises a *Brady* claim and
2 asserts that an allegedly exculpatory DNA report was disclosed by the deputy
3 prosecuting attorney on February 1, 2019. Dkt. 8 at 5.

4 From the limited record before the Court, it is unclear when the *Brady* claim
5 became ripe. “Notwithstanding the prohibition of second or successive petitions in most
6 cases, not every petition filed after an initial petition has been adjudicated is considered
7 second or successive.” *Brown v. Atchley*, 76 F.4th 862, 866 (9th Cir. 2023). The Ninth
8 Circuit in *Brown v. Atchley* explained that “a petitioner does not run afoul of the abuse of
9 the writ doctrine by raising a new claim in a successive petition that could not have been
10 raised in a prior petition.” *Id.* at 867.

11 The Court orders Respondent to supplement the state court record and file a
12 supplemental brief to clarify the issue of when Petitioner’s *Brady* claim became ripe, and
13 whether Petitioner’s current petition is, or is not, successive under *Brown v. Atchley*.
14 Respondent’s deadline for the supplemental record and brief is **January 19, 2025**.
15 Petitioner may file a response to the State’s supplemental brief on or before **February**
16 **2, 2025**. The Court instructs the Clerk to re-note Petitioner’s habeas corpus petition to
17 February 2, 2025.

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1 The Court further acknowledges Petitioner's request to note his motions for
2 discovery (Dkt. 9), request for records (Dkt. 11), motion to appoint counsel (Dkt. 15),
3 motion to complete service (Dkt. 17) and motion to take judicial notice (Dkt. 18). The
4 Court previously denied these motions as premature as they were filed prior to the
5 deadline for Respondent's answer. See Dkts. 14, 19, 20. These motions are no longer
6 premature. The Court instructs the Clerk to note Dockets 9, 11, 15, 17, 18 for February
7 9, 2025. Respondent's deadline for filing a response to these motions is January 26,
8 2025. Petitioner's deadline to file an optional reply brief concerning these motions is
9 February 9, 2025.

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11 Dated this 18th day of December, 2024.

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14 Theresa L. Fricke
15 Theresa L. Fricke
16 United States Magistrate Judge
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